



Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. L-32116 April 21, 1981

RURAL BANK OF CALOOCAN, INC. and JOSE O. DESIDERIO, JR., petitioners,
vs.
THE COURT OF APPEALS and MAXIMA CASTRO, respondents.

DE CASTRO, * J.:

This is a petition for review by way of certiorari of the decision ¹ of the Court of Appeals in CA-G.R. No. 39760-R entitled "*Maxima Castro, plaintiff-appellee, versus Severino Valencia, et al., defendants; Rural Bank of Caloocan, Inc., Jose Desiderio, Jr. and Arsenio Reyes, defendants-appellants,*" which affirmed *in toto* the decision of the Court of First Instance of Manila in favor of plaintiff-appellee, the herein private respondent Maxima Castro.

On December 7, 1959, respondent Maxima Castro, accompanied by Severino Valencia, went to the Rural Bank of Caloocan to apply for an industrial loan. It was Severino Valencia who arranged everything about the loan with the bank and who supplied to the latter the personal data required for Castro's loan application. On December 11, 1959, after the bank approved the loan for the amount of P3,000.00, Castro, accompanied by the Valencia spouses, signed a promissory note corresponding to her loan in favor of the bank.

On the same day, December 11, 1959, the Valencia spouses obtained from the bank an equal amount of loan for P3,000.00. They signed a promissory note (Exhibit "2") corresponding to their loan in favor of the bank and had Castro affixed thereon her signature as co-maker.

The two loans were secured by a real-estate mortgage (Exhibit "6") on Castro's house and lot of 150 square meters, covered by Transfer Certificate of Title No. 7419 of the Office of the Register of Deeds of Manila.

On February 13, 1961, the sheriff of Manila, thru Acting Chief Deputy Sheriff Basilio Magsambol, sent a notice of sheriff's sale addressed to Castro, announcing that her property covered by T.C.T. No. 7419 would be sold at public auction on March 10, 1961 to satisfy the obligation covering the two promissory notes plus interest and attorney's fees.

Upon request by Castro and the Valencias and with conformity of the bank, the auction sale that was scheduled for March 10, 1961 was postponed for April 10, 1961. But when April 10, 1961 was subsequently declared a special holiday, the sheriff of Manila sold the property covered by T.C.T. No. 7419 at a public auction sale that was held on April 11, 1961, which was the next succeeding business day following the special holiday.

Castro alleged that it was only when she received the letter from the Acting Deputy Sheriff on February 13, 1961, when she learned for the first time that the mortgage contract (Exhibit "6") which was an encumbrance on her property was for P6,000.00 and not for P3,000.00 and that she was made to sign as co-maker of the promissory note (Exhibit "2") without her being informed of this.

On April 4, 1961, Castro filed a suit denominated "Re: Sum of Money," against petitioners Bank and Desiderio, the Spouses Valencia, Basilio Magsambol and Arsenio Reyes as defendants in Civil Case No. 46698 before the Court of First Instance of Manila upon the charge, amongst others, that thru mistake on her part or fraud on the part of Valencias she was induced to sign as co-maker of a promissory note (Exhibit "2") and to constitute a mortgage on her house and lot to secure the questioned note. At the time of filing her complaint, respondent Castro deposited the amount of P3,383.00 with the court *a quo* in full payment of her personal loan plus interest.

In her amended complaint, Castro prayed, amongst other, for the annulment as far as she is concerned of the promissory note (Exhibit "2") and mortgage (Exhibit "6") insofar as it exceeds P3,000.00; for the discharge of her personal obligation with the bank by reason of a deposit of P3,383.00 with the court *a quo* upon the filing of her

complaint; for the annulment of the foreclosure sale of her property covered by T.C.T. No. 7419 in favor of Arsenio Reyes; and for the award in her favor of attorney's fees, damages and cost.

In their answers, petitioners interposed counterclaims and prayed for the dismissal of said complaint, with damages, attorney's fees and costs. ²

The pertinent facts arrived from the stipulation of facts entered into by the parties as stated by respondent Court of Appeals are as follows:

Spanning the present litigation are the facts contained in the following stipulation of facts submitted by the parties themselves:

1. That the capacity and addresses of all the parties in this case are admitted .
2. That the plaintiff was the registered owner of a residential house and lot located at Nos. 1268-1270 Carola Street, Sampaloc, Manila, containing an area of one hundred fifty (150) square meters, more or less, covered by T.C.T. No. 7419 of the Office of the Register of Deeds of Manila;
3. That the signatures of the plaintiff appearing on the following documents are genuine:
 - a) Application for Industrial Loan with the Rural Bank of Caloocan, dated December 7, 1959 in the amount of P3,000.00 attached as Annex A of this partial stipulation of facts;
 - b) Promissory Note dated December 11, 1959 signed by the plaintiff in favor of the Rural Bank of Caloocan for the amount of P3,000.00 as per Annex B of this partial stipulation of facts;
 - c) Application for Industrial Loan with the Rural Bank of Caloocan, dated December 11, 1959, signed only by the defendants, Severino Valencia and Catalina Valencia, attached as Annex C, of this partial stipulation of facts;
 - d) Promissory note in favor of the Rural Bank of Caloocan, dated December 11, 1959 for the amount of P3000.00, signed by the spouses Severino Valencia and Catalina Valencia as borrowers, and plaintiff Maxima Castro, as a co-maker, attached as Annex D of this partial stipulation of facts;
 - e) Real estate mortgage dated December 11, 1959 executed by plaintiff Maxima Castro, in favor of the Rural Bank of Caloocan, to secure the obligation of P6,000.00 attached herein as Annex E of this partial stipulation of facts;
- All the parties herein expressly reserved their right to present any evidence they may desire on the circumstances regarding the execution of the above-mentioned documents.
4. That the sheriff of Manila, thru Acting Chief Deputy Sheriff, Basilio Magsambol, sent a notice of sheriff's sale, address to the plaintiff, dated February 13, 1961, announcing that plaintiff's property covered by TCT No. 7419 of the Register of Deeds of the City of Manila, would be sold at public auction on March 10, 1961 to satisfy the total obligation of P5,728.50, plus interest, attorney's fees, etc., as evidenced by the Notice of Sheriff's Sale and Notice of Extrajudicial Auction Sale of the Mortgaged property, attached herewith as Annexes F and F-1, respectively, of this stipulation of facts;
5. That upon the request of the plaintiff and defendants-spouses Severino Valencia and Catalina Valencia, and with the conformity of the Rural Bank of Caloocan, the Sheriff of Manila postponed the auction sale scheduled for March 10, 1961 for thirty (30) days and the sheriff re-set the auction sale for April 10, 1961;
6. That April 10, 1961 was declared a special public holiday; (Note: No. 7 is omitted upon agreement of the parties.)
8. That on April 11, 1961, the Sheriff of Manila, sold at public auction plaintiff's property covered by T.C.T. No. 7419 and defendant, Arsenio Reyes, was the highest bidder and the corresponding certificate of sale was issued to him as per Annex G of this partial stipulation of facts;
9. That on April 16, 1962, the defendant Arsenio Reyes, executed an Affidavit of Consolidation of Ownership, a copy of which is hereto attached as Annex H of this partial stipulation of facts;
10. That on May 9, 1962, the Rural Bank of Caloocan Incorporated executed the final deed of sale in favor of the defendant, Arsenio Reyes, in the amount of P7,000.00, a copy of which is attached as Annex I of this partial stipulation of facts;

11. That the Register of Deeds of the City of Manila issued the Transfer Certificate of Title No. 67297 in favor of the defendant, Arsenio Reyes, in lieu of Transfer Certificate of Title No. 7419 which was in the name of plaintiff, Maxima Castro, which was cancelled;

12. That after defendant, Arsenio Reyes, had consolidated his title to the property as per T.C.T. No. 67299, plaintiff filed a notice of lis pendens with the Register of Deeds of Manila and the same was annotated in the back of T.C.T. No. 67299 as per Annex J of this partial stipulation of facts; and

13. That the parties hereby reserved their rights to present additional evidence on matters not covered by this partial stipulation of facts.

WHEREFORE, it is respectfully prayed that the foregoing partial stipulation of facts be approved and admitted by this Honorable Court.

As for the evidence presented during the trial, We quote from the decision of the Court of Appeals the statement thereof, as follows:

In addition to the foregoing stipulation of facts, plaintiff claims she is a 70-year old widow who cannot read and write the English language; that she can speak the Pampango dialect only; that she has only finished second grade (t.s.n., p. 4, December 11, 1964); that in December 1959, she needed money in the amount of P3,000.00 to invest in the business of the defendant spouses Valencia, who accompanied her to the defendant bank for the purpose of securing a loan of P3,000.00; that while at the defendant bank, an employee handed to her several forms already prepared which she was asked to sign on the places indicated, with no one explaining to her the nature and contents of the documents; that she did not even receive a copy thereof; that she was given a check in the amount of P2,882.85 which she delivered to defendant spouses; that sometime in February 1961, she received a letter from the Acting Deputy Sheriff of Manila, regarding the extrajudicial foreclosure sale of her property; that it was then when she learned for the first time that the mortgage indebtedness secured by the mortgage on her property was P6,000.00 and not P3,000.00; that upon investigation of her lawyer, it was found that the papers she was made to sign were:

(a) Application for a loan of P3,000.00 dated December 7, 1959 (Exh. B-1 and Exh. 1);

(b) Promissory note dated December 11, 1959 for the said loan of P3,000.00 (Exh- B-2);

(c) Promissory note dated December 11, 1959 for P3,000.00 with the defendants Valencia spouses as borrowers and appellee as co-maker (Exh. B-4 or Exh. 2).

The auction sale set for March 10, 1961 was postponed to April 10, 1961 upon the request of defendant spouses Valencia who needed more time within which to pay their loan of P3,000.00 with the defendant bank; plaintiff claims that when she filed the complaint she deposited with the Clerk of Court the sum of P3,383.00 in full payment of her loan of P3,000.00 with the defendant bank, plus interest at the rate of 12% per annum up to April 3, 1961 (Exh. D).

As additional evidence for the defendant bank, its manager declared that sometime in December, 1959, plaintiff was brought to the Office of the Bank by an employee- (t.s.n., p 4, January 27, 1966). She went, there to inquire if she could get a loan from the bank. The claims he asked the amount and the purpose of the loan and the security to be given and plaintiff said she would need P3,000.00 to be invested in a drugstore in which she was a partner (t.s.n., p. 811. She offered as security for the loan her lot and house at Carola St., Sampaloc, Manila, which was promptly investigated by the defendant bank's inspector. Then a few days later, plaintiff came back to the bank with the wife of defendant Valencia. A date was allegedly set for plaintiff and the defendant spouses for the processing of their application, but on the day fixed, plaintiff came without the defendant spouses. She signed the application and the other papers pertinent to the loan after she was interviewed by the manager of the defendant. After the application of plaintiff was made, defendant spouses had their application for a loan also prepared and signed (see Exh. 13). In his interview of plaintiff and defendant spouses, the manager of the bank was able to gather that plaintiff was in joint venture with the defendant spouses wherein she agreed to invest P3,000.00 as additional capital in the laboratory owned by said spouses (t.s.n., pp. 16-17) ³

The Court of Appeals, upon evaluation of the evidence, affirmed *in toto* the decision of the Court of First Instance of Manila, the dispositive portion of which reads:

FOR ALL THE FOREGOING CONSIDERATIONS, the Court renders judgment and:

(1) Declares that the promissory note, Exhibit '2', is invalid as against plaintiff herein;

(2) Declares that the contract of mortgage, Exhibit '6', is null and void, in so far as the amount thereof exceeds the sum of P3,000.00 representing the principal obligation of plaintiff, plus the interest thereon at 12% per annum;

(3) Annuls the extrajudicial foreclosure sale at public auction of the mortgaged property held on April 11, 1961, as well as all the process and actuations made in pursuance of or in implementation thereto;

(4) Holds that the total unpaid obligation of plaintiff to defendant Rural Bank of Caloocan, Inc., is only the amount of P3,000.00, plus the interest thereon at 12% per annum, as of April 3, 1961, and orders that plaintiff's deposit of P3,383.00 in the Office of the Clerk of Court be applied to the payment thereof;

(5) Orders defendant Rural Bank of Caloocan, Inc. to return to defendant Arsenio Reyes the purchase price the latter paid for the mortgaged property at the public auction, as well as reimburse him of all the expenses he has incurred relative to the sale thereof;

(6) Orders defendants spouses Severino D. Valencia and Catalina Valencia to pay defendant Rural Bank of Caloocan, Inc. the amount of P3,000.00 plus the corresponding 12% interest thereon per annum from December 11, 1960 until fully paid; and

Orders defendants Rural Bank of Caloocan, Inc., Jose Desiderio, Jr. and spouses Severino D. Valencia and Catalina Valencia to pay plaintiff, jointly and severally, the sum of P600.00 by way of attorney's fees, as well as costs.

In view of the conclusion that the court has thus reached, the counterclaims of defendant Rural Bank of Caloocan, Inc., Jose Desiderio, Jr. and Arsenio Reyes are hereby dismissed, as a corollary

The Court further denies the motion of defendant Arsenio Reyes for an Order requiring Maxima Castro to deposit rentals filed on November 16, 1963, resolution of which was held in abeyance pending final determination of the case on the merits, also as a consequence of the conclusion aforesaid. ⁴

Petitioners Bank and Jose Desiderio moved for the reconsideration ⁵ of respondent court's decision. The motion having been denied, ⁶ they now come before this Court in the instant petition, with the following Assignment of Errors, to wit:

I

THE COURT OF APPEALS ERRED IN UPHOLDING THE PARTIAL ANNULMENT OF THE PROMISSORY NOTE, EXHIBIT 2, AND THE MORTGAGE, EXHIBIT 6, INSOFAR AS THEY AFFECT RESPONDENT MAXIMA CASTRO VIS-A-VIS PETITIONER BANK DESPITE THE TOTAL ABSENCE OF EITHER ALLEGATION IN THE COMPLAINT OR COMPETENT PROOF IN THE EVIDENCE OF ANY FRAUD OR OTHER UNLAWFUL CONDUCT COMMITTED OR PARTICIPATED IN BY PETITIONERS IN PROCURING THE EXECUTION OF SAID CONTRACTS FROM RESPONDENT CASTRO.

II

THE COURT OF APPEALS ERRED IN IMPUTING UPON AND CONSIDERING PREJUDICIALLY AGAINST PETITIONERS, AS BASIS FOR THE PARTIAL ANNULMENT OF THE CONTRACTS AFORESAID ITS FINDING OF FRAUD PERPETRATED BY THE VALENCIA SPOUSES UPON RESPONDENT CASTRO IN UTTER VIOLATION OF THE RES INTER ALIOS ACTA RULE.

III

THE COURT OF APPEAL ERRED IN NOT HOLDING THAT, UNDER THE FACTS FOUND BY IT, RESPONDENT CASTRO IS UNDER ESTOPPEL TO IMPUGN THE REGULARITY AND VALIDITY OF HER QUESTIONED TRANSACTION WITH PETITIONER BANK.

IV

THE COURT OF APPEALS ERRED IN NOT FINDING THAT, BETWEEN PETITIONERS AND RESPONDENT CASTRO, THE LATTER SHOULD SUFFER THE CONSEQUENCES OF THE FRAUD PERPETRATED BY THE VALENCIA SPOUSES, IN AS MUCH AS IT WAS THRU RESPONDENT CASTRO'S NEGLIGENCE OR ACQUIESCENCE IF NOT ACTUAL CONNIVANCE THAT THE PERPETRATION OF SAID FRAUD WAS MADE POSSIBLE.

V

THE COURT OF APPEALS ERRED IN UPHOLDING THE VALIDITY OF THE DEPOSIT BY RESPONDENT CASTRO OF P3,383.00 WITH THE COURT BELOW AS A TENDER AND CONSIGNATION OF PAYMENT SUFFICIENT TO DISCHARGE SAID RESPONDENT FROM HER OBLIGATION WITH PETITIONER BANK.

VI

THE COURT OF APPEALS ERRED IN NOT DECLARING AS VALID AND BINDING UPON RESPONDENT CASTRO THE HOLDING OF THE SALE ON FORECLOSURE ON THE BUSINESS DAY NEXT FOLLOWING THE ORIGINALLY SCHEDULED DATE THEREFOR WHICH WAS DECLARED A HOLIDAY WITHOUT NECESSITY OF FURTHER NOTICE THEREOF.

The issue raised in the first three (3) assignment of errors is whether or not respondent court correctly affirmed the lower court in declaring the promissory note (Exhibit 2) invalid insofar as they affect respondent Castro vis-a-vis petitioner bank, and the mortgage contract (Exhibit 6) valid up to the amount of P3,000.00 only.

Respondent court declared that the consent of Castro to the promissory note (Exhibit 2) where she signed as co-maker with the Valencias as principal borrowers and her acquiescence to the mortgage contract (Exhibit 6) where she encumbered her property to secure the amount of P6,000.00 was obtained by fraud perpetrated on her by the Valencias who had abused her confidence, taking advantage of her old age and ignorance of her financial need. Respondent court added that "the mandate of fair play decrees that she should be relieved of her obligation under the contract" pursuant to Articles 24 ⁷ and 1332 ⁸ of the Civil Code.

The decision in effect relieved Castro of any liability to the promissory note (Exhibit 2) and the mortgage contract (Exhibit 6) was deemed valid up to the amount of P3,000.00 only which was equivalent to her personal loan to the bank.

Petitioners argued that since the Valencias were solely declared in the decision to be responsible for the fraud against Castro, in the light of the *res inter alios acta* rule, a finding of fraud perpetrated by the spouses against Castro cannot be taken to operate prejudicially against the bank. Petitioners concluded that respondent court erred in not giving effect to the promissory note (Exhibit 2) insofar as they affect Castro and the bank and in declaring that the mortgage contract (Exhibit 6) was valid only to the extent of Castro's personal loan of P3,000.00.

The records of the case reveal that respondent court's findings of fraud against the Valencias is well supported by evidence. Moreover, the findings of fact by respondent court in the matter is deemed final. ⁹ The decision declared the Valencias solely responsible for the defraudation of Castro. Petitioners' contention that the decision was silent regarding the participation of the bank in the fraud is, therefore, correct.

We cannot agree with the contention of petitioners that the bank was defrauded by the Valencias. For one, no claim was made on this in the lower court. For another, petitioners did not submit proof to support its contention.

At any rate, We observe that while the Valencias defrauded Castro by making her sign the promissory note (Exhibit 2) and the mortgage contract (Exhibit 6), they also misrepresented to the bank Castro's personal qualifications in order to secure its consent to the loan. This must be the reason which prompted the bank to contend that it was defrauded by the Valencias. But to reiterate, We cannot agree with the contention for reasons above-mentioned. However, if the contention deserves any consideration at all, it is in indicating the admission of petitioners that the bank committed mistake in giving its consent to the contracts.

Thus, as a result of the fraud upon Castro and the misrepresentation to the bank inflicted by the Valencias both Castro and the bank committed mistake in giving their consents to the contracts. In other words, substantial mistake vitiated their consents given. For if Castro had been aware of what she signed and the bank of the true qualifications of the loan applicants, it is evident that they would not have given their consents to the contracts.

Pursuant to Article 1342 of the Civil Code which provides:

Art. 1342. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual.

We cannot declare the promissory note (Exhibit 2) valid between the bank and Castro and the mortgage contract (Exhibit 6) binding on Castro beyond the amount of P3,000.00, for while the contracts may not be invalidated insofar as they affect the bank and Castro on the ground of fraud because the bank was not a participant thereto, such may however be invalidated on the ground of substantial mistake mutually committed by them as a consequence of the fraud and misrepresentation inflicted by the Valencias. Thus, in the case of *Hill vs. Veloso*, ¹⁰ this Court declared that a contract may be annulled on the ground of vitiated consent if deceit by a third person, even

without connivance or complicity with one of the contracting parties, resulted in mutual error on the part of the parties to the contract.

Petitioners argued that the amended complaint fails to contain even a general averment of fraud or mistake, and its mention in the prayer is definitely not a substantial compliance with the requirement of Section 5, Rule 8 of the Rules of Court. The records of the case, however, will show that the amended complaint contained a particular averment of fraud against the Valencias in full compliance with the provision of the Rules of Court. Although, the amended complaint made no mention of mistake being incurred in by the bank and Castro, such mention is not essential in order that the promissory note (Exhibit 2) may be declared of no binding effect between them and the mortgage (Exhibit 6) valid up to the amount of P3,000.00 only. The reason is that the mistake they mutually suffered was a mere consequence of the fraud perpetrated by the Valencias against them. Thus, the fraud particularly averred in the complaint, having been proven, is deemed sufficient basis for the declaration of the promissory note (Exhibit 2) invalid insofar as it affects Castro vis-a-vis the bank, and the mortgage contract (Exhibit 6) valid only up to the amount of P3,000.00.

The second issue raised in the fourth assignment of errors is who between Castro and the bank should suffer the consequences of the fraud perpetrated by the Valencias.

In attributing to Castro an consequences of the loss, petitioners argue that it was her negligence or acquiescence if not her actual connivance that made the fraud possible.

Petitioners' argument utterly disregards the findings of respondent Court of Appeals wherein petitioners' negligence in the contracts has been aptly demonstrated, to wit:

A witness for the defendant bank, Rodolfo Desiderio claims he had subjected the plaintiff-appellee to several interviews. If this were true why is it that her age was placed at 61 instead of 70; why was she described in the application (Exh. B-1-9) as drug manufacturer when in fact she was not; why was it placed in the application that she has income of P20,000.00 when according to plaintiff-appellee, she his not even given such kind of information -the true fact being that she was being paid P1.20 per picul of the sugarcane production in her hacienda and 500 cavans on the palay production. ¹¹

From the foregoing, it is evident that the bank was as much , guilty as Castro was, of negligence in giving its consent to the contracts. It apparently relied on representations made by the Valencia spouses when it should have directly obtained the needed data from Castro who was the acknowledged owner of the property offered as collateral. Moreover, considering Castro's personal circumstances – her lack of education, ignorance and old age – she cannot be considered utterly neglectful for having been defrauded. On the contrary, it is demanded of petitioners to exercise the highest order of care and prudence in its business dealings with the Valencias considering that it is engaged in a banking business –a business affected with public interest. It should have ascertained Castro's awareness of what she was signing or made her understand what obligations she was assuming, considering that she was giving accommodation to, without any consideration from the Valencia spouses.

Petitioners further argue that Castro's act of holding the Valencias as her agent led the bank to believe that they were authorized to speak and bind her. She cannot now be permitted to deny the authority of the Valencias to act as her agent for one who clothes another with apparent authority as her agent is not permitted to deny such authority.

The authority of the Valencias was only to follow-up Castro's loan application with the bank. They were not authorized to borrow for her. This is apparent from the fact that Castro went to the Bank to sign the promissory note for her loan of P3,000.00. If her act had been understood by the Bank to be a grant of an authority to the Valencia to borrow in her behalf, it should have required a special power of attorney executed by Castro in their favor. Since the bank did not, We can rightly assume that it did not entertain the notion, that the Valencia spouses were in any manner acting as an agent of Castro.

When the Valencias borrowed from the Bank a personal loan of P3,000.00 evidenced by a promissory note (Exhibit 2) and mortgaged (Exhibit 6) Castro's property to secure said loan, the Valencias acted for their own behalf. Considering however that for the loan in which the Valencias appeared as principal borrowers, it was the property of Castro that was being mortgaged to secure said loan, the Bank should have exercised due care and prudence by making proper inquiry if Castro's consent to the mortgage was without any taint or defect. The possibility of her not knowing that she signed the promissory note (Exhibit 2) as co-maker with the Valencias and that her property was mortgaged to secure the two loans instead of her own personal loan only, in view of her personal circumstances – ignorance, lack of education and old age – should have placed the Bank on prudent inquiry to protect its interest and that of the public it serves. With the recent occurrence of events that have supposedly affected adversely our banking system, attributable to laxity in the conduct of bank business by its officials, the need of extreme caution and prudence by said officials and employees in the discharge of their functions cannot be over-emphasized.

Question is, likewise, raised as to the propriety of respondent court's decision which declared that Castro's consignment in court of the amount of P3,383.00 was validly made. It is contended that the consignment was made without prior offer or tender of payment to the Bank, and it therefore, not valid. In holding that there is a substantial compliance with the provision of Article 1256 of the Civil Code, respondent court considered the fact that the Bank was holding Castro liable for the sum of P6,000.00 plus 12% interest per annum, while the amount consigned was only P3,000.00 plus 12% interest; that at the time of consignment, the Bank had long foreclosed the mortgage extrajudicially and the sale of the mortgage property had already been scheduled for April 10, 1961 for non-payment of the obligation, and that despite the fact that the Bank already knew of the deposit made by Castro because the receipt of the deposit was attached to the record of the case, said Bank had not made any claim of such deposit, and that therefore, Castro was right in thinking that it was futile and useless for her to make previous offer and tender of payment directly to the Bank only in the aforesaid amount of P3,000.00 plus 12% interest. Under the foregoing circumstances, the consignment made by Castro was valid. if not under the strict provision of the law, under the more liberal considerations of equity.

The final issue raised is the validity or invalidity of the extrajudicial foreclosure sale at public auction of the mortgaged property that was held on April 11, 1961.

Petitioners contended that the public auction sale that was held on April 11, 1961 which was the next business day after the scheduled date of the sale on April 10, 1961, a special public holiday, was permissible and valid pursuant to the provisions of Section 31 of the Revised Administrative Code which ordains:

Pretermission of holiday. – Where the day, or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day.

Respondent court ruled that the aforesaid sale is null and void, it not having been carried out in accordance with Section 9 of Act No. 3135, which provides:

Section 9. – Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

We agree with respondent court. The pretermission of a holiday applies only "where the day, or the last day for doing any act *required or permitted by law* falls on a holiday," or when the last day of a given period for doing an act falls on a holiday. It does not apply to a day fixed by an office or officer of the government for an act to be done, as distinguished from a period of time within which an act should be done, which may be on any day within that specified period. For example, if a party is required by law to file his answer to a complaint within fifteen (15) days from receipt of the summons and the last day falls on a holiday, the last day is deemed moved to the next succeeding business day. But, if the court fixes the trial of a case on a certain day but the said date is subsequently declared a public holiday, the trial thereof is not automatically transferred to the next succeeding business day. Since April 10, 1961 was not the day or the last day set by law for the extrajudicial foreclosure sale, nor the last day of a given period but a date fixed by the deputy sheriff, the aforesaid sale cannot legally be made on the next succeeding business day without the notices of the sale on that day being posted as prescribed in Section 9, Act No. 3135.

WHEREFORE, finding no reversible error in the judgment under review, We affirm the same *in toto*. No pronouncement as to cost.

SO ORDERED.

Teehankee (Acting, C.J.) Makasiar, Fernandez, Guerrero and Melencio-Herrera, JJ., concur.

Footnotes

* Mr. Justice de Castro was designated to sit with the First Division under Special Order No. 225.

1 Rollo, pp. 112-133.

2 Record on Appeal, pp. 84-89.

3 Rollo, pp. 112-117.

4 Rollo, pp. 117-118.

5 Motion for Reconsideration, Rollo, pp. 134-167.

6 Resolution of the Court of Appeals, dated May 25, 1970, Rollo, p. 168.

7 Art. 24. In all contractual property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

8 Art. 1332. When one of the parties is unable to read or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

9 Guico vs. Mayuga 63 Phil. 328; Velasco vs. Court of Appeals, 90 Phil. 688; Fonacier vs. Court of Appeals, 96 Phil. 417.

10 31 Phil. 160.

11 pp. 13-14, CA decision.